1941 **File No.** OLF Audit/41

Legal **DEPARTMENT**

**A BRANCH**

**Subject:—**

Opinions under the Bombay Local Fund Audit Act 1930

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# C O N T E N T S.

Legal Department File No. O. L.F. Audit / 41.

| S.No. | Compilation No. | Subject | Pages. |
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| | | Opinions under the Bombay Local Fund Audit Act,1930. | |
| 1. | O.No.5139 6-6-1941. | Sections 9 and 11 Bombay Municipal Boroughs Act- sec.63,68 and 71..... Whether the disciplinary action should be taken against the members of the Municipality for misapplication of the Municipal Fund. | 1 - 4. |

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Office of the R.L.A.

It appears that the Godhra Municipality levies a special sanitary cess of Re.1/- per seat in private privies; the cess brings in a revenue of Rs.2,000/- per annum while the cost of the service is Rs.4,000/-. Government had in 1922 laid down the principle that the proceeds of a special sanitary cess should not be less than the cost of the special private services rendered by the municipal agency. The Municipality however has declined, on one ground or another, to raise the sanitary cess or to reduce the cost of the service. The Commissioner, Northen Division, therefore suggests that disciplinary action should be taken against the members of the Municipality under the Local Fund Audit Act, 1930, for misapplication of the Municipal fund for meeting part of the cost of the private sanitary service. The questi raised for consideration is whether such action is feasible.

2. Section 9 of the Bombay Local Fund Audit ~~x~~ Act provides that the Examiner shall include in his report a statement inter alia of every payment which appears to him to be contrary to law, or any material impropriety or irregularity. Section 10 provides that the Local Authority shall within 3 months, either remedy the defec pointed out, or send to the Examiner any further explana tion, and that if the Examiner holds that the defects ha not been removed he shall state whether the amount to wh the defects or irregularities relate should be surcharge Section 11 provides that the Commissioner may, after con sidering the recommendation of the Examiner and after taking the explanation of the person concerned or making such further inquiry as appears to him necessary, disall any item which appears to him to be contrary to law and surcharge the same on the person making or authorising illegal payment. The question therefore would be whethe

the expenditure of Rs.2,000/- out of the general Municipal fund for providing the special sanitary service in this case would be contrary to law. Under section 65 of the Bombay Municipal Boroughs Act, 1925, the Municipality holds the Municipal fund as a trustee and is bound to apply it for the purposes of the Act. Under section 71 of the Act the Municipality is empowered at it discretion to provide, out of the Municipal fund for any measure not specified in section 66 which is likely to promote public health or convenience. This would empower a Municipality to apply the Municipal fund for promoting public health by cleaning private latrines. Consequently the expenditure in question cannot be held to be contrary to law and no action is possible under section 11 of the Bombay Local Fund Audit Act, 1930.

Sd/-
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Remembrancer of Legal Affairs.

U.R. to G.D. No.5139, dated the 6th June 1941.

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